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No. 02-855

Supreme Court, U.S.
FILED
MAR 18 2003
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IN THE

SUPREME COURT OF THE UNITED STATES

GEORGE M. GALAZA, Warden, et al., *Petitioners*

v.

JESUS AVILA, *Respondent*

ON PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONDENT'S SUPPLEMENT BRIEF RE MOOTNESS

(U.S. Supreme Court Rule 15.8)

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Counsel for Respondents

On February 21, 2003, Respondent entered a plea agreement whereby he pled guilty to one count of attempted murder in the second degree. The agreement provided that Respondent would receive credit for the nine years he had already served for the attempted murder and that he would receive credit for the additional time he had served (approximately 3 ½ years) which would be applied to the parole period. Since Respondent had already served a total of 12 ½ years at the time the agreement was made, he was released.

In its reversal of the federal district court's denial of Respondent's habeas petition, the Ninth Circuit ordered that Respondent be granted a new trial. The intervening plea agreement negated the need for a new trial. It is Respondent's position that this plea agreement makes the current case before this Court moot. Therefore, Respondent respectfully requests that the petition for writ of certiorari be dismissed.

Respondent further requests that this Court deny Petitioner's request for the equitable remedy of vacatur. This opinion of the Ninth Circuit's should not be vacated. The Ninth Circuit's opinion highlights the egregious misconduct of a trial attorney whose dereliction of duty amounted to incompetence under *Strickland v. Washington*, 466 U.S 668 (1984). Trial counsel's conduct should be held up as an example to all counsel representing individuals in criminal matters where one's liberty interests may be severely impacted, as were Respondent's here.

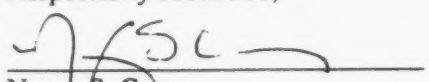
CONCLUSION

For all the reasons set forth above, Respondent respectfully requests that the Court dismiss or deny the petition for writ of certiorari, as there is no need for this Court to address the

merits of this case. Respondent further requests that this Court deny Petitioner's request to vacate the decision of the Ninth Circuit Court of Appeal.

March 13, 2003

Respectfully submitted,



Nancy S. Coan
Paulette Donsavage
Counsel for Respondent
Jesus Avila

DECLARATION OF SERVICE BY MAIL
IN THE SUPREME COURT OF THE UNITED STATES

Case Name: George Galaza, Warden, et al. v. Jesus Avila
Case No.: 02-855

I, Nancy S. Coan, declare:

I am over 18 years of age, and not a party to the within cause. My business and mailing address is 111 Pine Street, Suite 1300, San Francisco, CA. On March 13, 2003, I served a copy of the attached:

RESPONDENT'S SUPPLEMENTAL BRIEF RE MOOTNESS
(U.S. Supreme Court Rule 15.8)

on the following, by facsimile first class U.S. Mail as follows:

Shawn McGahey Webb
Deputy Attorney General
300 S Spring Street, Suite 5212
Los Angeles, CA 90013

I hereby certify that I am the Attorney of Record for Petitioner, Jesus Avila, in this matter.

Each envelope was sealed on March 13, 2003 and placed in the United States mail at Alameda, CA, the county in which my home office is located, with the postage thereon fully prepaid.

X I declare that the above referenced document was provided to the CLERK OF COURT by Federal Express.
X I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 13, 2003 at Alameda, California.

Nancy S. Coan, Declarant